MISCELLANY.

Constitutionality of Legislation Affecting Corporations Exclusively. —It has been peremptorily decided that corporations as well as natural persons are within the protection of the fourteenth amendment (Santa Clara County *v.* R. R., 118 U. S. 394, 396; R. R. *v.* Nebraska, 164 U. S. 403); but, like natural persons, they are subject to regulation by the states under the police power, which cuts across that amendment. May police regulations, however, be put upon corporations exclusively? Undoubtedly under the police power there may be classification, but it must be based on some reasonable distinction. In the earlier cases in the United States Supreme Court, the rule was loosely laid down that "special legislation is not class legislation if all persons brought under its influence are treated alike under the same conditions." Missouri Pac. R. R. *v.* Mackey, 127 U. S. 205, 209. The later cases define the rule more sharply, and require further that the legislation in its classification bring within its influence all who are under the same conditions. Connolly *v.* Union Sewer Co., 184 U. S. 540; R. R. *v.* Ellis, 165 U. S. 150. By this test regulations concerning corporations solely, when correcting evils arising only from corporate enterprises, would be constitutional. No doubt it is on this ground that statutes abolishing the fellow servant rule with regard to railroad corporations (for a collection of these statutes, see 2 Labatt, Master and Servant, § 743, et seq.), are to be upheld; the hazards of railroading afford a reason for the discrimination, and the court takes judicial notice that railroads are exclusively run by corporations. See Ballard *v.* Miss. Cotton Oil Co., 81 Miss. 507, 569. It must be admitted, however, that some courts have sustained these statutes on the ground that the word "corporation" therein is to be construed as also including natural persons. Pittsburgh, etc., R. R. *v.* Lightheiser (Ind.), 78 N. E. Rep. 1033; Schus *v.* Powers-Simpson Co., 85 Minn. 447. On the other hand, where the evils sought to be checked are incident to private as well as corporate enterprises, laws applicable only to corporations would clearly be unconstitutional. Ballard *v.* Miss. Cotton Oil Co., supra. See Lavalle *v.* R. R., 40 Minn. 249, 252. And such was the holding of a recent Indiana case where the statute required railroad and other corporations to answer in damages for injuries to employees caused by superior servants. Bedford Quarries Co. *v.* Bough, 80 N. E. Rep. 529. There is no reason in the nature of things why corporations should be treated differently in this respect from large partnerships, such as some express companies, or from individuals.

There is a way, however, in which corporations can be regulated differently from individual enterprises. Today practically every corporation holds its charter subject to amendment, alteration, or repeal by the legislature, at least when the public interest requires it. The law is settled that neither property nor vested rights of a cor-

poration can be taken, without compensation, by the exercise of this power, nor can the aim of the charter be so changed as to alter the original purpose of the grant. Lake Shore, etc., R. R. *v.* Smith, 173 U. S. 84, 698. But laws such as that in the present case do not transgress any of these limitations, and so could be imposed on domestic corporations under this power of amendment. Similar regulations could be placed upon foreign corporations as a condition precedent to their right to do business within the state,—at least where the business is not interstate commerce,—for a state can exercise unhampered discretion with respect to such privilege. Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28; Hancock Mut. Life Ins. Co. *v.* Warren, 181 U. S. 73, 76. The question then remains, how statutes like the present, general in their wording, are to be construed. Some cases, including the principal case, hold that they can not be construed as amendments to the incorporation laws, since they are applicable to foreign as well as domestic corporations. Johnson *v.* Goodyear Mining Co., 127 Cal. 4. Ignoring this objection, other courts construe them as such amendments. Shaffer & Munn *v.* Union Mining Co., 55 Md. 74; State *v.* Brown & Sharpe, 18 R. I. 16; R. R. *v.* Paul, 64 Ark. 83, affirmed 173 U. S. 404. Why could not these statutes be held to fulfill at once the twofold function of an amendment to the incorporation laws and a regulation of the permission to foreign corporations to do business within the state? It is a maxim of constitutional law that a decent respect for the legislature and the proper balance of the powers of government require the judiciary not to declare a law unconstitutional unless the necessity is obviously compelling. Therefore, in the absence of statutory (see Braceville Coal Co. *v.* People, 147 Ill. 66; State *v.* Haun, 61 Kan. 146) or constitutional provisions, such as those of Indiana (Burns' Ann. Ind. Stat., §§ 115, 117), regulating the amendment of laws and the enactment of statutes, general laws such as the one under discussion should be upheld on the twofold basis suggested.—Harvard Law Review.

The Old Bailey Records.—There has been an auction sale of the fittings of the Courts at the Old Bailey, attended by much newspaper reflections on the pathos and tragedy attending past trials in these grim old Courts. One matter with respect to the sale calls for comment. A large number of documents appear to have been left in the old building, hidden in cupboards or scattered on the floor, and excerpts from some such documents, appropriated and read by the casual visitor, have been published. We venture to suggest that the officials of the Central Criminal Court ought not to have left these papers about. Either they are part of the records, which should have been carefully transferred to their new quarters, or they are documents which should have been carefully collected and sorted, and, if superfluous or useless, destroyed. What has happened suggests that the transfer was haphazard, and that some of the scattered

documents may, in fact, be important as records of the Court, or as containing valuable information as to its practice and procedure. Irreparable damage has been done for historians by past carelessness as to the custody of documents, and we think inquiry ought to be made, before it is too late, into the remaining documents of the Old Bailey.—London Law Journal.

IN VACATION.

He Was "All In."—In the recent case of State *v.* Hennessy, 90 Pac. Rep. 221, the Nevada Supreme Court gives a definition of the slang phrase "All in." The question came up in connection with the admission in evidence of a dying declaration, the declarant's statement that he was "all in" being relied on to show that he was under a sense of impending death. The court said: "The expression 'I am all in' is one frequently made use of in this western country, and when used under the circumstances in question may, we think, be taken to have meant that the speaker considered his life was practically at an end."—Law Notes.

"Whip Hell Out of You" Judicially Defined.—The grave and difficult question, whether a gentleman who expressed an intention to "whip hell out of" another thereby threatened to kill or inflict serious bodily injury on the person who was to have the hell extracted from his composition, was before the Texas Court of Criminal Appeals, in Hix *v.* State, 102 S. W. Rep. 405. The threatened party, it seems, was reluctant to be deprived of his hell, so he undertook to impair the threatener's physical ability to carry out the program—in which endeavor he was quite successful. Davidson, P. J., said: "As to how serious a result would have happened to appellant if the assaulted party whipped hell out of him can only be conjectured from the use of the language. What effect whipping hell out of appellant would have had upon him personally as to his physical condition is not shown, but we hardly think that it was of such nature as would have produced death or serious bodily injury."—Law Notes.

"Baalim's Ass Spake."—Since the decision rendered by Judge Battle of the supreme court of Arkansas, Baalim's ass no longer has an unrestricted right to "spake." That distinguished jurist said, in Ex parte Foote, 70 Ark. 12, 65 S. W. 706, 708: "As a rule, a jack is kept for one purpose only, and that is the propagation of his own species and mules. He has a loud, discordant bray, and, as counsel say, frequently 'makes himself heard, regardless of hearers, occasions, or solemnities.' He is not a desirable neighbor. The purpose for which he is kept, his frequent and discordant brays, and the associations connected with him, bring the keeping of him in a populous city or town 'within the legal notion of a nuisance.'"